RECENT DECISIONS

BILLS AND NOTES—HOLDER IN DUE COURSE AS ASSIGNEE OF CONTRACT.—The defendant contracted to purchase goods from A who assigned his "rights, title, and interest" in the contract to the plaintiff bank. A subsequently drew bills of exchange on the defendant, attaching thereto bills of lading. The defendant accepted the bills of exchange; A thereupon negotiated them to the plaintiff for value. In an action by the plaintiff on the bills, the defendant set up as a defense a breach of contract by A. *Held,* one judge dissenting, that the assignment to the plaintiff did not render him subject to the equities existing between the original parties. *Antoniou* v. *The Union Bank* (Can. Sup. Ct. 1920) 56 Dom. L. R. 338.

A assigned only his claim against the defendant; the plaintiff did not undertake to perform A's duties. The bill of exchange was formally correct. The defendant must have anticipated that the drawer would negotiate it. Upon negotiation to a purchaser for value, the defendant would lose the advantage of any equities which might exist against the drawer. *Downing Co.* v. *Pearson Banking Co.* (1917) 20 Ga. App. 242, 92 S. E. 968; *Cosmos Cotton Co.* v. *First Nat. Bank* (1911) 171 Ala. 392, 54 So. 621; *cf.* Uniform Bills of Lading Act §§ 36, 37; *contra, Russel* v. *Smith Grain Co.* (1902) 80 Miss. 688, 32 So. 287. But even assuming the position of the minority, namely, that the plaintiff as assignee was in effect the drawer and payee of the bill, the plaintiff would still be entitled to recover. A promissory note made to the payee in exchange for consideration received by the maker from a third party is binding. *Crosier* v. *Crosier* (1913) 215 Mass. 535, 102 N. E. 901. And one who holds himself out as a purchasing remitter has the power to invest an innocent payee for value with a valid claim against the drawer, though in fact there be a failure of consideration between the original parties. *Munroe* v. *Bordier* (1849) 8 C. B. 861; see (1920) 20 COLUMBIA LAW REV. 755, 756, 759. And where B in consideration of a promise from A makes a note in favor of C, who gives A consideration, it is no defense for B that A has breached his promise and furnished no consideration. *Cagle* v. *Lane* (1887) 49 Ark. 465, 5 S. W. 790; *Nelson* v. *Cowing* (N. Y. 1844) 6 Hill 336 (*semble*). For in effect the transaction is as if B had drawn in favor of A who had endorsed to C, a purchaser for value. So, making the assumption of the minority, when the payee, having given value to the vendor, draws on the vendee who accepts because of a consideration moving from the vendor, a third party, the payee may recover regardless of the state of the agreement between the vendor and vendee. For again the transaction is as if the vendee had accepted the bill of the drawer who in turn had endorsed for value to the payee. And so from all views the instant case seems sound.

CONSTITUTIONAL LAW—ARMY AND NAVY—STATE LEGISLATION AFFECTING PRIMARILY FEDERAL QUESTIONS.—The defendant was convicted of violating a statute, Minn., Genl. Stat. (Supp. 1917) § 8521, making it "unlawful for any person in any public place . . . to advocate . . . that men should not enlist in the military or naval forces of the United States or the State of Minnesota" or "to advocate . . . that the citizens of this state should not aid the United States in . . . carrying on war with the public enemies of the United States." On error, *held,* Mr. Chief Justice White and Mr. Justice Brandeis dissenting, the statute was constitutional. *Gilbert* v. *State of Minnesota* (1920) 41 Sup. Ct. 125.

Matters primarily federal in nature may also be subject to state legislation.

A statute preventing the use of the national flag for advertising purposes was held constitutional. *Halter* v. *Nebraska* (1907) 205 U. S. 34, 27 Sup. Ct. 419. The provision of Art. I, § 8 of the federal Constitution that Congress shall have the power to declare war, to raise armies and to maintain a navy does not preclude all state legislation affecting these subjects. An Illinois statute prohibiting any body of men other than the state militia and United States troops from drilling or parading with arms without a license, did not infringe upon the domain of the federal government. *Presser* v. *Illinois* (1886) 116 U. S. 252, 6 Sup. Ct. 580. Appropriations by towns and counties to pay bounties to induce volunteers to enter the military service of the United States have been held not repugnant to the Constitution. *Board of Commrs.* v. *Bearss* (1865) 25 Ind. 110; *cf. Booth* v. *Town of Woodbury* (1864) 32 Conn. 118. Likewise, state laws providing for the payment of a bonus to men who had been in the federal service have been held valid. *Gustafson* v. *Rhinow* (Minn. 1920) 175 N. W. 903; *State* v. *Handlin* (1917) 38 S. Dak. 550, 162 N. W. 379. A Montana act similar to the statute in the instant case has been sustained. *State* v. *Kahn* (1919) 56 Mont. 108, 182 Pac. 107. Such legislation generally has been held constitutional so long as it did not actually assume powers of the national government or hinder the operation of the federal laws. The instant case follows the general rule.

CONTRACTS—IDENTITY OF PARTIES.—The plaintiff, having applied twice for a ticket of admission to a theatre performance, was refused because of past disagreements with the defendant manager. Thereupon he secured a ticket through the medium of one Pollock. When he presented himself at the theatre, he was denied admission by order of the defendant. In an action for procuring a breach of the contract between the plaintiff and the theatre company, *held,* there was no contract. *Said* v. *Butt* [1920] 3 K. B. 497.

By the modern English view, the purchase of a theatre ticket gives the holder a license to witness the performance which includes a contract not to revoke the license so long as he conducts himself properly. *Hurst* v. *Picture Theatres, Ltd.* [1915] 1. K. B. 1. However, it is elementary in contract law that one may choose with whom he will contract; and the owner of a theatre, being under no public duties like those of a common carrier, may refuse admission to whomever he will. *People ex rel. Burnham* v. *Flynn* (1907) 189 N. Y. 180, 82 N. E. 169. These principles must be reconciled with the general rule that an undisclosed principal may sue on a contract made by his agent. It is believed that this rule should be limited to cases where the personal element is absent, *i. e.,* where the third person would not have refused to contract with the principal directly. And so specific performance has been refused to the undisclosed principal. *Cowan* v. *Curran* (1905) 216 Ill. 598, 75 N. E. 322. And the third person is not held to the contract while it is yet executory. *Moore* v. *Vulcanite Cement Co.* (1907) 121 App. Div. 667, 106 N. Y. Supp. 393. Rescission has been allowed in a similar situation even where the party seeking it could show no actual damage. *Gordon* v. *Street* [1899] 2 Q. B. 641; *Whurr* v. *Devenish* (1904) 20 T. L. R. 385. The Massachusetts court has gone far in refusing recovery against the third party even after he has consumed the goods supplied by the principal. *Boston Ice Co.* v. *Potter* (1877) 123 Mass. 28. But a result opposite in principle was reached in *Kelly Asphalt Block Co.* v. *Barber Asphalt Paving Co.* (1909) 136 App. Div. 22, 120 N. Y. Supp. 163. While this result may not accord with rigorous contract theory, it is certainly more equitable. However, where the undisclosed principal can be put in *statu quo,* there seems to be no valid reason for holding the third party on the contract; and the facts of the instant case disclose no reason warranting an infraction of the basic rule that one may choose with whom he will contract.